

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

**TRAVELERS CASUALTY AND SURETY
COMPANY OF AMERICA**

PLAINTIFF

VS.

CIVIL ACTION NO.: 3:22-CV-747-HTW-LGI

**KNOX ROSS, JR., FRANK BOYD,
MEGAN HALL, MICHAEL ADAMS,
JERRY NORWOOD, MARGIE WARREN,
JAMES RAY HARRELL, EDWARD JONES**

DEFENDANTS

DEFENDANTS' RESPONSE IN OPPOSITION TO SUMMARY JUDGMENT

COME NOW Defendants Knox Ross, Jr., Frank Boyd, Megan Hall, Michael Adams, Jerry Norwood, Margie Warren, James Ray Harrell, and Edward Jones, (collectively, "Defendants"), and submit this their Response to the Motion for Summary Judgment filed by Plaintiff Travelers Casualty and Surety Company of America ("Travelers") and respectfully request the Court deny the Motion as there exist multiple genuine issues of material fact. This Court should deny the Motion.

All named Defendants in this matter are or were elected officials for the Town of Pelahatchie, Mississippi; all named Defendants here are also defendants in related state court actions, notably one brought against them by the Mississippi Office of the State Auditor, White v. Ross, et al., (Hinds County Chancery Court, First Judicial District), Cause No: 25CH1: 19-cv-00421, who also named Travelers and two other surety companies as defendants. The "loss" complained of by Plaintiff Travelers Casualty and Surety Company of America ("Travelers") was a payment made to settle the Auditor's claim against Travelers for breach; each Defendant here

remains a defendant in that state court suit, in part because there has not yet been any judicial determination that the Defendants committed any wrongdoing or breached their duty in any way. Defendants swear in their discovery responses and affidavits that they did faithfully perform all duties and uphold all obligations of their offices, as contemplated by Miss. Code Ann. § 25-1-45, and that the Town of Pelahatchie also suffered no loss as it was never missing any money from its funds. The Defendants further swear that all expenditures complained of were made for public purposes and that the payment Travelers made to the Auditor resulted in unjust enrichment to the Town, which suffered no injury or damage. Defendants have not committed any actionable negligence or fault, nor any malfeasance or misbehavior in public office; there has been no misuse of powers under color of office, and Defendants believe that he/she will be exonerated in the matter pending in state court, which will be competent legal evidence they upheld their duties of office and satisfied their obligations under the Bonds.

Regarding claims for indemnity, Travelers correctly notes that such claims, whether under contract law or common law, are based on the legal principle that indemnity arises if a party pays a monetary amount on behalf of another party who should in all fairness pay or have paid the amount. Based on the evidence attached hereto as is proper under Rule 56, there exists a dispute of material fact as to whether Travelers can prove that Defendants violated the terms of their Bond or that Defendants failed to perform their duties of office faithfully. There are also disputed issues of material fact of the equity involved that remain in dispute, as well as to the question of whether Travelers' payment was made in bad faith. The bad faith is best shown through the fact that Travelers has no investigation which supports payment of the claims; though Travelers did conduct an investigation in 2018, neither it, nor the law Travelers relied on

in its investigation, supported payment. In fact, the investigation actually supported denial of payment of the Auditor's claims in favor of Defendants.

Thus, there exists at a minimum a genuine issue of material fact, and Travelers is not due judgment as a matter of law; this Court should deny the Motion.

In support thereof, Defendants offer the following exhibits:

- Exhibit A – Affidavit of Knox Ross, Jr.
- Exhibit B – Affidavit of Frank Boyd
- Exhibit C – Affidavit of Megan Hall
- Exhibit D – Affidavit of Michael Adams
- Exhibit E – Affidavit of Jerry Norwood
- Exhibit F – Affidavit of Margie Warren
- Exhibit G – Affidavit of James Ray Harrell
- Exhibit H – Affidavit of Edward Jones
- Exhibit I – Travelers' written discovery responses
- Exhibit J – Travelers Oct. 1, 2018, correspondence
- Exhibit K – Travelers Dec. 12, 2018, correspondence
- Exhibit L – Emfinger Order Granting Motion to Dismiss
- Exhibit M – Wise Order and Opinion
- Exhibit N – Dec. 27, 2017, city attorney memorandum
- Exhibit O – Beechem email correspondence
- Exhibit P – Beechem crossclaim in the Auditor's suit
- Exhibit Q – Defendants' Responses to Travelers' discovery requests
- Exhibit R – Davis deposition excerpts

In further support thereof, Defendants offer this Court the accompanying, supporting memorandum brief being filed contemporaneously herewith, and incorporate all argument and authority contained therein as if fully set out in this Response.

WHEREFORE PREMISES CONSIDERED, Defendants, Knox Ross, Jr., Frank Boyd, Megan Hall, Michael Adams, Jerry Norwood, Margie Warren, James Ray Harrell, and Edward Jones, pray that this Court will find the Plaintiff's Motion for Summary Judgment to be not well-taken, and find that there exist genuine issues of material fact and that the Plaintiff Travelers is

not entitled to judgment as a matter of law. The Defendants request that this Court deny the Motion against Travelers in favor of the Defendants.

Respectfully submitted, this the 20th day of December, 2023.

**KNOX ROSS, JR., FRANK BOYD, MEGAN
HALL, MICHAEL ADAMS, JERRY
NORWOOD, MARGIE WARREN, JAMES
RAY HARRELL, EDWARD JONES**

By: Mills, Scanlon, Dye & Pittman

By: /s/ John P. Scanlon
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CERTIFICATE OF SERVICE

I, John P. Scanlon, one of the attorneys for Defendants Knox Ross, Jr., Frank Boyd, Megan Hall, Michael Adams, Jerry Norwood, Margie Warren, James Ray Harrell, and Edward Jones, do hereby certify that I have this date electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which sent notification of such filing to all counsel of record.

This the 20th day of December, 2023.

/s/ John P. Scanlon
John P. Scanlon